



04 NOV 2009

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In re Application of	:	
EBERL et al.	:	
Serial No.: 10/551,443	:	DECISION ON
PCT App. No.: PCT/EP01/11634	:	
Int'l Filing Date: 08 October 2001	:	PETITION
Priority Date: 07 October 2000	:	
Attorney Docket No.: 101795.56306US	:	UNDER 37 CFR 1.47(a)
For: DEVICE AND METHOD FOR DETER-	:	
MINING THE ORIENTATION OF AN EYE	:	

This decision is in response to applicant's renewed petition under 37 CFR 1.47(a) filed 04 September 2009 in the above-captioned application in the United States Patent and Trademark Office (USPTO). This is also responsive to applicant's request for status under 37 CFR 1.42.

### **BACKGROUND**

The procedural history of this application was set forth in the decision mailed on 05 June 2009 and is hereby incorporated by reference. This decision reviews applicant's petition pursuant to 37 CFR 1.47(a) to accept the application without the signature of Matthias Mayer, the legal representative of deceased inventor Roland H. C. Eberl.

On 04 September 2009, applicant filed a renewed petition along with a newly executed declaration on behalf of the deceased inventor and pursuant to 37 CFR 1.47(a), his legal representative

### **DISCUSSION**

As previously set forth, 37 CFR § 1.42 requires that in the case of the death of the inventor, the legal representative of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent.

37 CFR 1.497(a)(3) requires that the declaration identify each inventor and the country of citizenship of each inventor. 37 CFR 1.497(b)(2) requires the declaration to state the relationship of the person (under 37 CFR 1.42) making the declaration for a deceased inventor. 37 CFR 1.497(b)(2) further states that, *if the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration must state that the person is a*

*legal representative and indicate the citizenship, residency and mailing address of the legal representative.*

The declaration submitted on 04 September 2009 identifies all inventors including the deceased inventor Roland Eberl and Matthias Mayer, the legal representative for deceased inventor. The declaration states the citizenship, residency and mailing address for all inventors, including the legal representative and deceased inventor's citizenship, former residency and mailing address on the declaration and is acceptable under 37 CFR 1.497(a) and (b).

Petition under 37 CFR 1.47(a)

Since the legal representative for the deceased inventor is required to execute the declaration and appears unwilling to do so, a petition under 37 CFR 1.47(a) is required. A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(g), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Applicant previously satisfied Items (1), (2) and (3). As for Item (4), a declaration executed by the joint inventors on their behalf and on behalf of the non-signing legal representative for deceased inventor was provided and is now acceptable.

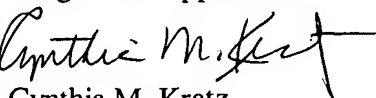
In sum, Petitioner has satisfied Items (1)-(4). Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is GRANTED. The petition under 37 CFR §1.47(a) is GRANTED.

The U.S. Designated/Elected Office has accepted the application as a 37 CFR 1.47(a) application using the declaration filed 04 September 2009. The application has an international filing date of 08 October 2001 under 35 U.S.C. 363, and a date of 04 September 2009 under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.



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UNITED STATES PATENT AND TRADEMARK OFFICE

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Dear Mr. Mayer:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

  
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